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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUANG YANG

Appeal 2009-001164
Application 09/677,493
Technology Center 2100

Decided: January 15, 2010

Before LANCE LEONARD BARRY, JOHN A. JEFFERY, and
THU A. DANG, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant, pursuant to 37 C.F.R. § 41.52, has submitted a timely
Request for Rehearing dated August 31, 2009 (“Request”), requesting

rehearing of our original decision dated September 14, 2009.¹ The Examiner rejected: (1) claims 1 and 6 under 35 U.S.C. § 103(a) as unpatentable over Gill, Bowman-Amuah, and Allport; (2) claims 2-4 under 35 U.S.C. § 103(a) as unpatentable over Gill, Bowman-Amuah, Allport, and Koppolu; (3) claim 5 under 35 U.S.C. § 103(a) as unpatentable over Gill, Bowman-Amuah, Allport, Koppolu, and Moursund; (4) claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Gill, Bowman-Amuah, Allport, and Teper. In that opinion, we affirmed the rejections of claims 1 and 3, but reversed the rejections of claims 2 and 4-7. Opinion 21.

We have reconsidered our September 14, 2009 Opinion in light of Appellant's comments in the Request, and we find no errors therein. We therefore decline to change our prior decision for the following reasons.

Appellant has included new evidence related to Microsoft® Publisher and Word with the Request. *See* Request, App'x A and B. Evidence not previously relied upon in the Briefs, however, is not permitted in the Request, except when: (1) Appellant shows, based on a recent relevant decision by the Board or a Federal Court, good cause for introducing the evidence, or (2) a new ground of rejection was made in the Opinion pursuant to § 41.50(b). *See* 37 C.F.R. § 31.52(a); *see also* Manual of Patent Examining Procedure, 8th ed., Rev. 3 (MPEP) § 1214.03. Neither exception applies. Moreover, 37 C.F.R. § 41.77(b)(1) cited by the Appellant (Request 2) is inapplicable because our decision does not involve reversing an Examiner's decision not to make a rejection proposed by a requester in an

¹ Although Appellant styles the Request as a request to reopen prosecution, we nonetheless consider the Request as a request to rehear our earlier decision.

inter partes reexamination proceeding.² The present appeal is an *ex parte* appeal. We will therefore not consider the new evidence and arguments regarding the evidence in the Request.

Additionally, throughout the Request, Appellant makes several statements that claims 1-7 are patentable under 35 U.S.C. § 101. Request 2, 4, 13, and 15-17. Claims 1-7, however, were rejected under § 103—not § 101. We will therefore not address any arguments related to § 101 and claims 1 and 3.

Appellant separately argues claim 1 from claim 3. We therefore address each claim separately.

Claim 1

Appellant discusses Gill, Bowman-Amuah, and Allport individually and contends some of the claim limitations are lacking in each reference. Request 5-6. We reiterate that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Since the obviousness rejections of claims 1 and 3 are based on at least the *combination* of Gill, Bowman-Amuah, and Allport, any arguments that Gill or Bowman-Amuah alone fail to disclose or teach a relational database (Request 5), or that Allport alone fails to teach an integrated database data editing system (Request 6) are not persuasive. *See id.*

² A reexamination proceeding occurs only after a patent application has issued into a patent. *See* 35 U.S.C. § 302.

Appellant asserts the Board erred in several factual findings and legal conclusions regarding Gill, Bowman-Amuah, and Allport. Request 6-7. For example, without any argument or evidence, Appellant alleges that Gill, Bowman-Amuah, and Allport do not teach or suggest individually nor collectively anything related to an integrated relational database data editing system that includes a client computer accessing, editing, and modifying database data from a remote server computer database. Request 7. However, mere arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

Appellant also contends that both (a) Gill and Bowman-Amuah and (b) Gill and Allport are unrelated. Request 6 and 11. As stated in our Opinion (Opinion 9), “[t]he analogous-art test requires that the Board show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection.” *In re Kahn*, 441 F.3d 977, 986-87 (Fed. Cir. 2006) (citing *Oetiker*, 977 F.2d at 1447). Further, we stated that while Allport is not in the same field of endeavor as Appellant's invention, Allport is nevertheless reasonably pertinent to the problem with which the Appellant was concerned (i.e., organizing data in a database in an efficient and consumer-friendly manner) and is therefore analogous art. *See id.* at 10; FF 6 and 10.

Regarding Appellant's argument that Gill and Bowman-Amuah are unrelated, we note that this argument is untimely.³ We also see no reason why it could not have been presented earlier in the Appeal Brief. Regardless, Gill is in the same field of endeavor as Appellant's invention, and is a database data editing system with controlled access to information through an authentication process (FF 1, 3 and 4). Likewise, Bowman-Amuah is reasonably pertinent to the problem Appellant was concerned (i.e., controlling user access to information). *See* FF 7. We therefore disagree with Appellant that Gill, Bowman-Amuah, and Allport are unrelated or non-analogous art.

Appellant further argues that our first finding of fact (FF 1) is erroneous. Request 7-8. Appellant asserts that the disclosed "data base" in Gill is not a relational database, and that the term "data base" is allegedly not a known term of art. Request 8. Notably, Appellant appears to distinguish the term "data base" (i.e., with a space between "data" and "base") as somehow being substantively different from the term "database" (i.e., having no space). *See id.*

We fail to see this distinction as meaningful, and Appellant has not provided any evidence that an ordinarily skilled artisan would understand the phrase "data base" as meaning anything different than "database." Moreover, we do not agree that the term "database" "is a computer scientific term referring to [a] relational database." Request 8 and 11. First, Appellant provides no supporting evidence of this position. Second, while a relational

³ *See Optimus Tech., Inc. v. Ion Beam Appl'ns. S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) ("[A]n issue not raised by an appellant in its opening brief ... is waived.") (citations and quotation marks omitted).

database is a type of database, not all databases are relational databases. Otherwise, the adjective “relational” preceding “database” would be rendered meaningless or superfluous.

Appellant also asserts that we allegedly “erred and misapprehended” all the findings of facts, including FF 2-10. *See* Request 7-10. Nonetheless, Appellant fails to point out the purported errors in our findings. Regarding FF 2-3, Appellant states that Gill does not disclose that the files are transferred from, or data is stored in, a relational database. Request 8. These findings of fact, however, do not state that Gill discloses a relational database. *See* FF 2-3. In fact, we admitted that Gill fails to disclose a relational database. Opinion 10.

As for FF 4, Appellant does not even discuss Gill, but instead discusses the functions of the new evidence that will not be considered. Request 8. As for FF 5, Appellant argues that Gill does not state what the S4 is and how it is connected to the networks. Request 9. However, other than stating S4 is a data communication connection, FF 5 does not allege what S4 is or how it is connected to the network. *See* FF 5. Regarding FF 6, Appellant summarizes what Allport teaches in the finding and has not specifically pointed out an error. Request 9. As for FF 7 and 8, Appellant argues that Bowman-Amuah did not invent access control techniques or TCP. Request 9. These findings of fact do not assert Bowman-Amuah invented access control techniques or TCP. Lastly, Appellant makes no arguments for FF 9-10. Request 9-10.

Appellant next asserts that Gill, Bowman-Amuah, and Allport are not physically combinable, and that an ordinarily skilled artisan would not combine their teachings into a functional system. Request 11-13.

Specifically, Appellant contends that the Gill and Allport are not related to an integrated data editing system. Request 11. As stated in the Opinion, however, Gill discloses an editing database system that permits a client computer to edit and modify the database data. *See* Opinion 10-11; *see also* FF 2-4. Moreover, Appellant admits Gill uses “commercial, text, picture, movie and sound editors” (Request 5), and that a staff member using the client computer can “access, modify, and update data on the server” (Request 12). Thus, Gill discloses a data editing system that permits a client computer to edit and modify data.

Appellant, however, repeats his position that Gill does not teach a relational database editing system. Request 11-12. We disagree to the extent that Gill discloses a database editing system. As stated above, including a space between “data” and “bases” in column 2, line 46 of Gill does not imply that Gill fails to disclose a database that includes a collection of multimedia object data and information related to the object data. *See* FF 1. We therefore find that Gill is related to an editing database system that permits the editing of database data.

Although Gill does not disclose a *relational* database data editing system of claim 1, Allport nevertheless cures this deficiency. *See* Opinion 10. Appellant contends that Allport is not analogous art, and that *Kahn* does not apply. Request 11. While Allport does not discuss a data editing system having all the features of claim 1, we nonetheless maintain that Allport is analogous art. *See* Opinion 10. Allport relates to database system that has the ability to organize and edit data in a user-friendly manner using a relational database (FF 6) and, therefore, is reasonably pertinent to the problem with which the Appellant is concerned—permitting database data

editing in an efficient and easy-to-use manner (FF 10). *See also Kahn*, 441 F.3d at 986-87. Moreover, combining Allport's teaching of using a relational database with Gill's database will permit editing in an easy-to-use manner and efficiently and does not render Gill inoperable for its intended editing purposes. In fact, such a combination predictably improves Gill in the same manner as Allport by having a database data editing system that now edits data in a more efficient and user-friendly manner. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007).

Appellant also contends that the Opinion does not demonstrate that one skilled in the art would not have recognized that multi-media objects and data can be stored in relational databases because the technologies to store data in files and databases are different, and that there are difficulties in storing multi-media data in databases. Request 11. We are not persuaded. First, as stated above, Gill discloses storing multimedia objects and information in databases. *See* FF 1. Thus, Gill addresses the purported difficulties of storing multimedia data in a database enough to be able to store such data in a database, and teaches a known technology that involves more than storing multimedia data in a file.

Second, Allport, as discussed above, provides an ordinarily skilled artisan with a technique for organizing Gill's database data in a more user-friendly and efficient manner by using a relational database to store data. *See* FF 6. Moreover, as stated in the Opinion (Opinion 10), Appellant discusses in the Background of the Invention that it is known that relational databases support multimedia data. *See* FF 9. Allport's teaching and this common knowledge provide ample support to conclude that an ordinarily skilled artisan would have recognized that Gill's multi-media objects and

information can also be stored within a relational database. *See Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006) (citations omitted). We therefore find that Gill and Allport are analogous art and are combinable into a functioning system for the reasons set forth above and in the Opinion.

Appellant also argues that Gill fails to disclose a TCP/IP protocol used to communicate between client and server computers because Gill does not state explicitly what S4 is and how S4 is connected to the Internet. Request 9 and 12. We agree that Gill does not disclose a TCP/IP protocol for communication between client and server. Nonetheless, Gill does teach data communications between client and server through a S4 Internet connection. Additionally, the Opinion relies on Bowman-Amuah (FF 8)—not Gill—for teaching that TCP is a known and commonly-understood transport protocol for communication. *See* Opinion 11. Furthermore, Bowman-Amuah discloses an architecture framework that is used in a client-server relationship for transporting information over a network and the Internet. *See* col. 1, ll. 25-31 and col. 1, l. 59- col. 2, l. 37. Based on Bowman-Amuah's teachings and the suggestion of a TCP/IP network transport protocol for a network and Internet communications in a client/server relationship, such as Gill's, we disagree with Appellant (Request 12) that an ordinarily skilled artisan would not know what network transport protocol to use with Gill's disclosed Internet connection between client and server computers.

Moreover, the level of ordinary skill in the art may be evidenced by the prior art references. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) ("Although the Board did not make a specific finding on skill level, it

did conclude that the level of ordinary skill in the art . . . was best determined by appeal to the references of record We do not believe that the Board clearly erred in adopting this approach.”); *see also In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). Here, Gill’s database editing system permits editing of data over an Internet connection indicates a level of skill commensurate with at least that of computer network engineer. *See* FF 1-5. Bowman-Amuah also indicates a level of skill commensurate with computer architecture engineer interacting with the Internet or World Wide Web. *See* FF 7-8; col. 1, ll. 25-31 and col. 1, l. 59- col. 2, l. 37. This relatively high level of skill evidenced by the references themselves tends to bolster the Examiner’s position that skilled artisans would have combined the references since the motivation to do so is “inextricably linked to the level of ordinary skill.” *See DyStar*, 464 F.3d at 1370.

Finally, Appellant alleges that combining Gill and Bowman-Amuah does not yield a predictable or meaningful result, and does not teach a database editing system with a user authentication and access control mechanism. Request 13. We disagree. Our opinion states that Gill teaches controlling staff members’ access (FF 2), and Bowman-Amuah teaches known technique for controlling access to group users and assigning different access privileges. *See* Opinion 12. We further indicated that such a combination of Gill and Bowman-Amuah would predictably result in permitting certain member groups have different access privileges to data depending on their job. Opinion 12. Such an ability to permit access privileges to only certain groups is tantamount to the predictable use of prior art elements according to their established functions (e.g., providing an access control mechanism that assigns different user groups with different

privileges)—an obvious improvement over Gill’s check-in and check-out procedure (FF 3). *See KSR*, 550 U.S. at 417.

We find therefore no error in holding that Gill, Bowman-Amuah, and Allport collectively teach the contested features recited in claim 1.

Claim 3

Appellant asserts that Koppolu does not teach anything related to an integrated database data editing system. Request 13-14. We refer Appellant to our previous discussion related to attacking references individually. *See also Merck*, 800 F.3d at 1097. Additionally, Koppolu discloses an application window or data manager 3201 that includes project objects 3213-3215 in a header panel, and another panel or detail panel 3205 that provides details about a selected project object. *See* FF 12. Thus, while Koppolu may not discuss that this data manager is a database data manager, combining this teaching with Gill’s disclosure of a database editing system (FF 1) and Allport’s teaching for using a relational database (FF 6) predictably yields and relates to an integrated relational database data editing system with a database data manager as recited in claim 3.

Appellant further argues that Koppolu is not combinable with Gill, Bowman-Amuah, and Allport, and that such a combination is meaningless. Request 15. We disagree. As explained in our Opinion, the Examiner has reasonably articulated that an ordinarily skilled artisan would have combined Koppolu’s teaching with the other cited references so as to provide a layout structure that allows the user to visualize and select from information for editing. *See* Opinion 17-18 (referring to Ans. 8). This rationale provides ample reason to combine the references, and supports a legal conclusion of

obviousness based on the cited references. *See KSR*, 550 U.S. at 418. Moreover, we fail to see how combining Koppolu's teaching with the references renders the combined system unpredictable (Request 15). In any event, Appellant has provided no evidence to the contrary.

Lastly, Appellant requests that prosecution be reopened. Request 16. Although the Board lacks jurisdiction to grant such a request, we nonetheless refer Appellant to MPEP § 1214.⁴ Appellant can reopen prosecution by filing a Request for Continuing Examination (RCE) and following the accompanying requirements under 37 C.F.R. §§ 1.114 and 1.198. *See* MPEP § 1214.07; *see also* MPEP § 1214.06(II) (addressing treatment of dependent claims that have been reversed by a Board decision).

In conclusion, we have carefully considered the arguments raised by Appellant in the Request, but the arguments are not persuasive to find that the original decision was in error. Based on the record before us, we are not persuaded that the Examiner erred in rejecting claims 1 and 3 under § 103. Moreover, we maintain our reversal of claims 2 and 4-7 based on the record before us.

⁴ *See* MPEP § 1214, *available at* http://www.uspto.gov/web/offices/pac/mpep/mpep_e8r5_1200.pdf.

Appeal 2009-001164
Application 09/677,493

We have granted the Request to the extent that we have reconsidered our decision of September 14, 2009, but we deny the request with respect to making any changes therein.

REHEARING DENIED

pgc

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